WONG KIM POH

v.

PUBLIC PROSECUTOR

COURT OF CRIMINAL APPEAL, SINGAPORE
YONG PUNG HOW CJ
CHAN SEK KEONG J
CHAO HICK TIN J
[CRIMINAL APPEAL NO. 14 OF 1990]
6 JANUARY 1992

CRIMINAL PROCEDURE: *Submission on appeal that the defence of the appellant had not been completely considered nor reason given for rejection - Whether such failure is fatal - Whether prejudicial evidence admitted - Section 122(s) Criminal Procedure Code.*

The appellant was convicted and sentenced to death on a charge of murder under s. 302 of the Penal Code and appealed against conviction and sentence. The evidence was that the appellant was trying to obtain some money from the deceased who had earlier borrowed money from the appellant's wife stabbed with a bearing scraper. At the close of the case for the prosecution the appellant submitted that there was no case to answer as he had no intention to kill the deceased. The appellant was called to make his defence to which he elected to remain silent and declined to call any witness nor did his Counsel make any further submissions. The admissibility, the voluntariness or the accuracy of the appellant's statements were not challenged by the appellant. On appeal the appellant submitted that the defence of the appellant had not been completely considered nor reasons given for its rejection and that all the exceptions to s. 300 of the Penal Code had not been considered by the trial Judges and such failure was fatal. Lastly that the trial Judges had erred in admitting the entire appellant's statements including prejudicial passages both inculpatory and exculpatory.

Held:

[1] The test to assess the inculpatory and exculpatory statements is laid down in *Chan Kin Choi's* case [1991] 1 MLJ 260 and the trial Judges had considered the entire statement and expressly the defence of provocation.

[2] The trial Judges had made an express finding that the appellant had inflicted the fatal wounds when the deceased failed to pay up her debt of 500. In making this finding, the trial Judges had disbelieved the appellant's statement in his confession entitled to reject that the deceased and the appellant "went for the bearing scraper and there was a struggle between them".

[3] In a criminal trial without a jury, as in all such trials in Singapore, the wrongful admission of evidence of the bad character or disposition of the accused does not necessarily mean that the Judge or Judges have been adversely influenced by such evidence as Judges are trained to assess evidence objectively and to shift the wheat from the chaff.

[4] However having said that Prosecutors should exercise more care in admitting statements under s. 122(5) of the Criminal Procedure Code. The said section is not a carte blanche to introduce irrelevant and/or prejudicial statements made by the accused which would otherwise not have been admissible under the provisions of the Evidence Act or the Criminal Procedure Code. Prosecutors should exercise more care in future in complying with the rules of the procedure and evidence in this particular respect. In this case there was no miscarriage of justice by the admission of the entire s. 121 statements of the CPC.

[Appeal dismissed.]

Cases referred to:
Sultan Mohamed v. Regina [1952] 18 MLJ 186 ***(cit)***
Balasingham v. PP [1959] 25 MLJ 193 ***(cit)***
Vijayaratnam v. PP [1962] 28 MLJ 106 ***(cit)***
Chan Kin Choi v. PP [1991] 1 MLJ 260 ***(cit)***
R v. Storey and Anwar [1968] 52 Cr App R 334 ***(cit)***
R v. Leong Kam-kwok [1985] 81 CR. App R 83 ***(cit)***
GFL Ewin v. PP [1949] 15 MLJ 279 ***(cit)***
Mat Sawi b. Bahodin v. PP [1958] 24 MLJ 189 ***(cit)***
Jaganathan v. PP [1963] 29 MLJ 274 ***(cit)***
Soh Cheow Hor v. Regina [1960] 26 MLJ 254 ***(cit)***
Teoh Seng Lian v. PP [1986] 1 MLJ 474 ***(cit)***
Ramlan b. Salleh v. PP [1987] CLJ (Rep) 314 ***(cit)***
Mohamed Kunjo v. PP [1978] 1 MLJ 51 ***(cit)***
Makin v. AG of New South Wales [1894] AC 57 ***(Cons)***

Legislation referred to:
Criminal Procedure Code [Sing], ss. 121, 122(5), 122(6), 396
Penal Code [Sing], ss. 300, 302

For the appellant - R Palakrishnan, Palakrishnan and Partners
For the respondent - Seng Kwang Boon; DPP

JUDGMENT

Yong Pung How CJ:

On 10 August 1990 the appellant was convicted and sentenced to suffer death on a charge of murder, being an offence punishable under s. 302 of the Penal Code. He appealed against the conviction and sentence.

The facts were that on 26 October 1983 a female prostitute was found murdered in her rented room at a boarding flat in Geylang. The autopsy which was performed the next morning found nine injuries on her body. Six of these injuries were triangular stab wounds on her chest, and each of them by itself was sufficient to cause death in the ordinary course of nature. According to the pathologist who performed the autopsy, these six fatal wounds were all directed at the centre of the body where the vital organs were located. There were too many stab wounds on the body, and they were too deep, ranging between 6 cm and 9 cm, for them to have been caused accidentally.

At the same time that the body of the deceased was found, the occupant of another rented room in the same boarding flat found that her room had been ransacked. Missing were some $10,000 in money and some $30,000 worth in jewellery, which included one gold coloured bracelet, one gold coloured medallion, and another gold coloured bracelet studded with green and white stones.

No further developments took place for some time. But about five years later, with the assistance of the Malaysian police, the appellant was traced in Alor Setar, Kedah in Malaysia and was arrested and extradited to Singapore. While in custody, he made a statement under s. 122(6) and another five statements under s. 121 of the Criminal Procedure Code (CPC). The appellant did not challenge the admissibility, the voluntariness or the accuracy of any of these statements, and they were admitted by the trial Judges under s. 122(5) as evidence after having been satisfied as to their admissibility. In his statements, the appellant related how in 1982 he had brought a Malaysian girl into Singapore for the purpose of prostitution and had lived on her earnings. Early in 1983 they had gone back together to Malaysia for

the Chinese New Year, and had got married there in March 1983. Soon thereafter they had returned to Singapore, where she resumed working as a prostitute, while he continued to live on her earnings, until later in 1983 when they decided to return to Malaysia. Back in Malaysia, however, he soon ran through her accumulated savings. Again in need of money, he remembered that his wife had lent $500 to the deceased early in 1983, while they were in Singapore; he also remembered that, before leaving Singapore, he had asked the deceased to repay the loan, but she had claimed then that she had no money. He thought that if he only frightened her, she would pay up. Armed with a bearing scraper which he bought in Malaysia, he went back to Singapore to look for her.

When he found her in her room in the boarding flat and asked for repayment of the loan, she again claimed that she was unable to repay the money because she was out of work, and thus had no money. He threatened her by pointing the bearing scraper at her neck, but she brushed the bearing scraper aside. It fell to the floor, and the appellant claimed that they both fought for it. He managed to get it, and stabbed her a number of times with it. Before he fled the scene, he noticed that the door of the next room was open, so he went in, broke open the drawer of the wardrobe and stole the cash and items of jeweller which have been described earlier. He went back to Malaysia and spent the money, and, when the money was exhausted, he sold or pawned the jewellery.

The relevant part of one of the appellant's s. 121 statements read as follows:

> ... I took a taxi and proceeded to Lorong 29 Geylang ... I saw (the deceased) at the hall. She also saw me outside the gate. I called her name and asked her to unlock the gate for me to go in as I have something to talk to her. She obliged and unlocked the iron grille gate with her set of keys. I could not recall where she took her keys from. At the hall, I asked her for the $500. "Sow Cheng" replied that she had no money as she had been out of work. While replying to me, she moved towards her room. She entered her room and I followed in. This was the room which my wife and I previously occupied when we were in Singapore. I chided her for breaking her promise and that I was also in dire need of money. She kept on saying that she had no money and out of work. I then whipped out the bearing scraper which I kept it in my sock and threatened her with it. I also pointed the bearing scraper somewhere in her neck region. At that moment, I did not have any intention to harm her. I merely wanted to frighten her to submit hoping that I could collect the $500. "Sow Cheng" on seeing my weapon appeared more aggressive and swipe my right hand away with her left. On impact, the bearing scraper dropped from my right hand and landed on the floor. "Sow Cheng" and I went for the bearing scraper and there was a struggle between us. I managed to grab hold of the bearing scraper and in the process, I saw blood on my right palm. I also felt pain. "Sow Cheng" and I were down on the floor and she was still trying to grab my hand. At that juncture, I lost my head and just kept on stabbing "Sow Cheng" with the bearing scrapper. I could not know how many times did I plunge the bearing scrapper onto her body. I am also unable to say whether or not did she uttered any sound at that moment. After a brief moment, I stopped and I then realised that "Sow Cheng" was motionless and blood on her body. I also saw blood on my hands. At the moment I also did not know whether "Sow Cheng" was dead or alive. I then went to the kitchen area and washed the blood away on my hands.

At the close of the case of the prosecution, it was submitted on behalf of the appellant that there was no case to answer as he did not have an intention to kill the deceased; but the learned trial Judges found that the prosecution had made out a case on the charge for the appellant to answer, and therefore called on him to enter on his defence. The appellant elected to remain silent and declined to call any witness for his defence. His Counsel also declined to make a further submission. The Court's consideration of the matter was set out on p. 22 of the grounds of decision which read as follows:

> From the accused's confession, which we found to be true, it is clear to us that he had come all the way from Malaysia to Singapore armed with a bearing scraper in order to collect the $500 debt the deceased owed him. He looked up the deceased and inflicted all these fatal stab wounds when she failed to pay up. From the weapon used and the location of these fatal stab wounds, we have no doubt whatsoever that the accused, when he stabbed the deceased, had intended to inflict the kind of bodily injuries on the deceased which were sufficient in the ordinary course of nature to cause death. We have also found that there was no provocation coming from the deceased to the accused and the accused was not entitled to the benefit of exception 1 to s. 300 of the Penal Code. We again considered the prosecution evidence and we were satisfied that the prosecution had proved its case beyond all reasonable doubt. We therefore found the accused guilty and convicted him.

The passage emphasised is referred to later in our judgment.

Before this Court, Mr. Palakrishnan Counsel for the appellant contended that the written grounds of judgment were almost entirely confined to extensive quotations from the six statements by the appellant, and the remainder of the grounds did not show that the defence had been completely considered, much less the reasons for its rejection. There was no reasoned judgment on the facts and the law which was necessary to show that the Court had got to the bottom of the case. He referred the Court to *Sultan Mohamed v. Regina* [1952] 18 MLJ 186; *Balasingham v. PP* [1959] 25 MLJ 193; and *Vijayaratnam v. PP* [1962] 28 MLJ 106.

In particular, he contended that the statements which constituted the main evidence against the appellant were in fact mixed statements, containing both inculpatory and exculpatory passages, and the trial Judges wrongly treated them as wholly inculpatory and as true. This totally ignored the principles laid down so recently by this Court in *Chan Kin Choi v. PP* [1991] 1 MLJ 260, which referred to the decisions by the English Court of Appeal (Criminal Division) in *R v. Storey and Anwar* [1968] 52 Cr. App. R 334 and by the Privy Council in *R v. Leong Kam-kwok* [1985] 81 Cr. App. R 83. The trial Judges should have considered both the inculpatory parts which were likely to be true, and the exculpatory parts which were the evidence of the facts stated, and this was of particular importance in a case such as this where the accused elected, as he was entitled, to remain silent. By their misdirecting themselves the trial Judges held the confessions to be true and dismissed any argument by the defence of provocation based on exception 1 to s. 300 of the Penal Code. We disagreed with this argument. As correctly pointed out, *Chan Kin Choi's* case lays down the test. It was clear to us that the learned Judges did not err. In fact, they had considered the entire statement and expressly rejected the defence of provocation as seen from the extract above.

Another argument raised by Counsel for the appellant was that the trial Judges had a duty to consider all the exceptions to s. 300 of the Penal Code even though the defence had not raised any of them. The failure or omission of the trial Judges to do so was fatal. He referred us to *Mat Sawi b. Bahodin v. PP* [1958] 24 MLJ 189; *GFL Ewin v. PP* [1949] 15 MLJ 279; *Soh Cheow Hor v. Regina* [1960] 26 MLJ 254; *Jaganathan v. PP* [1963] 29 MLJ 274; *Teoh Seng Lian v. PP* [1986] 1 MLJ 474; *Ramlan b Salleh v. PP* [1987] CLJ (Rep) 314. Counsel contended that in particular the trial Judges had failed to consider exceptions 2 and 4 having regard to what the appellant had said in his s. 121 statements. We disagreed with this contention. In our view, the authorities cited by Counsel did not support such a wide proposition. In each of the said decisions, there was some evidence on one or more of these defences which was fit to be referred to the jury or the assessors for their finding but which the Judge had withheld from them. The correct position is set out in the following passage from the judgment of the Privy Council (delivered by Lord Scarman) in *Mohamed Kunjo v. PP* [1978] 1 MLJ 51, at p. 53:

The exception was not relied upon by the defence either at trial or before the Court of Criminal Appeal. It is not mentioned in the judgments of the High Court or the Court of Criminal Appeal. Can it now be raised for the first time?

Where trial has been by jury and the burden of proof is upon the prosecution to negative the defence, it is settled law that the Judge must put to the jury all matters which upon the evidence could entitle the jury to return a lesser verdict than murder. And, if the Judge fails to do so, the board will intervene, even if the matter was not raised below. For otherwise there would be the risk of a failure of justice. In *Kwaku Mensah v. The King*, Lord Goddard, giving the reasons of the board for allowing the appeal, said, p. 94:

The principles on which this board acts in criminal cases are well known and need no repetition, but when there has been an omission to place before the jury for their consideration a matter of such grave importance that they were never led to consider whether in this respect the prosecution had discharged the onus which lay on them of proving murder as distinct from manslaughter, their Lordships think that they can properly entertain the appeal. They would add that it must be seldom that they consider a matter which was not only not mentioned in the Courts below, but was not included in the reasons given by the appellant in his case.

Although different considerations arise where, as here, the burden of proving the defence or exception is upon the defendant and trial is by Judge (or Judges) alone, Mr. French for the public prosecutor has not contended either that s. 105 of the Evidence Act, or the mere fact of trial being by Judge alone, precludes the board from considering a defence not raised below. But he does raise the point that it does not follow from a Judge's silence as to a possible defence that he has ignored it. He may have thought the matter too plain for argument - more especially, if it has not been raised by the defence. Moreover it would not, in our judgment, assist the administration of criminal justice if there were to be cast upon the High Court the duty of reciting in judgment only to reject every defence that might have been raised but was not. Nevertheless there will be cases in which justice required the board to consider matters not mentioned in the Court below.

Exception 2 refers to the exercise in good faith of the right of private defence and where the accused uses excessive power in the exercise of such right but without any premeditation and without doing more harm than is necessary for the purpose of such defence. In our view, this defence was incompatible with the express finding of the trial Judges that the appellant had inflicted the fatal wounds when she failed to pay up her debt of $500. In making this finding, the trial Judges had disbelieved the appellant's statement in his confession that the deceased and the appellant "went for the bearing scraper and there was a struggle between [them]". The trial Judges were entitled to reject this part of the confession of the appellant: see *Chan Kin Choi*. Furthermore, the evidence of the pathologist who conducted the autopsy clearly showed exception 2 could have no application. There were six triangular stab wounds on the deceased's chest, and the pathologist's, evidence was that any of the six by itself would have been sufficient to cause the death of the deceased in the ordinary course of nature. The inapplicability of this defence was too plain for argument. Exception 4 refers to killing a person without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner. For the same reasons given earlier in this para., this defence was also not available to the appellant. The s. 121 statements did not disclose a sudden fight. There was no point in the trial Judges reciting this exception in their judgment only for the purpose of rejecting it.

Counsel for the appellant made one further submission that the trial Judges erred in law in admitting the appellant's statements in their entirety without considering that there was prejudicial evidence in the statements which suggested that the appellant may be guilty of

other offences and/or was of bad character. He relied on *Makin v. AG of New South Wales* [1894] AC 57. He said that no evidence was given that the appellant had a good character, and therefore, several parts of the appellant's statement ought not to have been admitted as they showed bad character. He submitted that the evidence might have influenced the trial Judges. He further submitted that if the evidence had no probative value, it was inadmissible.

We did not agree with this submission. Although the trial Judges have reproduced the whole of the s. 121 statements in their grounds of decision, and the statements showed that the appellant was, prior to the killing, a pimp and had lived on the immoral earnings of his girl friend, there was no basis to suggest that the trial Judges had been adversely influenced in any way by these statements concerning the character of the appellant. They had merely accepted the appellant's confession as to his motive for coming to Singapore and his stabbing of the deceased, but without accepting his exculpatory statements. In a criminal trial without a jury, as in all such trials in Singapore, the wrongful admission of evidence of the bad character or disposition of the accused does not necessarily mean that the Judge or Judges have been adversely influenced by such evidence. We must bear in mind that Judges are trained to assess evidence objectively and to sift the wheat from the chaff. It is, of course, true to say that the admission of past conviction of the accused or of his bad disposition or reputation may influence the minds of the Judges. But, this is very far from saying that there was a probability that it has influenced them or indeed that it has influenced them in a particular case. Section 396 of the CPC makes it clear that no finding of the trial Court shall be reversed unless the wrongful admission of evidence has resulted in a miscarriage of justice. In this case, we did not think that there was any miscarriage of justice by the admission of the entire s. 121 statements.

Having said that, we should also like to say that prosecutors should exercise more care in admitting statements under s. 122(5). Here, the entire s. 121 statements containing 17 paras were tendered in evidence when all that the deputy public prosecutor desired was to admit that portion which contained the confession of the appellant that he had stabbed the deceased in the circumstances mentioned therein. The confession was contained in the last para. of the statements, that is, para. 17, the bulk of which we have quoted in para. 6 above. The other 16 preceding paras of the statements were concerned with the past activities of the appellant and had nothing whatever to do with the offence for which he was charged. Section 122(5) is not a *carte blanche* to introduce irrelevant and/or prejudicial statements made by the accused which would otherwise not have been admissible under the provisions of the Evidence Act or the CPC. We expect prosecutors to exercise more care in future in complying with the rules of the procedure and evidence in this particular respect.

In the result, we were satisfied that on the evidence the trial Judges were fully justified in convicting the appellant of murder. Accordingly we dismissed the appeal.

Also found at [1992] 2 CLJ 937